

REMARKS

Claims 12, 15, 16, 19-23, 25, 26, 28, 29 and 31-33 are pending in the present application. In the above amendments, claims 12, 16 and 20-22 have been amended.

Applicant respectfully responds to this Office Action.

Claim Rejections – 35 USC § 101

Claims 12, 15, 20-23, 25, 26, 28, 29, 31 and 32 were rejected under 35 U.S.C. §101 as allegedly being directed to non-statutory subject matter.

The rejections of claims 12, 15, 20-23, 25, 26, 28, 29, 31 and 32 as allegedly being directed to non-statutory subject matter are respectfully traversed. On August 24, 2009, a MEMORANDUM was promulgated containing “Interim Examination Instructions For Evaluating Subject Matter Eligibility Under 35 U.S.C. § 101.” The Interim Examination Instructions provide guidance pending a final decision from the Supreme Court in *Bielski v. Kappos*. There are two criteria for determining subject matter eligibility. The claimed invention (1) must be directed to one of the four statutory categories, and (2) must not be wholly directed to subject matter encompassing a judicially recognized exception.

Claims 12, 15 and 32 recite a process, which is one of the four statutory categories. “A process claim, to be statutory under § 101, must pass a machine-or-transformation test, which ensures that the process is limited to a particular practical application.” See, Interim Examination Instructions, page 4. Claim 12, as amended, recites, a “method for generation of a cryptographic by a wireless communication device, comprising: . . . storing the second public key in a memory of the wireless communication device prior to initiation of the second secure wireless communication with the desired communication device; initiating, in response to user input, the second secure wireless communication of the wireless communication device with the desired communication device; and transmitting the second public key to the desired communication device if the second public key is available in memory.” Emphasis added. Recited in amended claim 12 is a particular machine, namely, a wireless communication device, that generates first and second public keys, that securely communicates with the desired communication device, that stores the second public key in memory of the wireless

communication device, that initiates the second secure wireless communication of the wireless communication device with the desired communication device, and that transmits the second public key to the desired communication device. The steps of storing the second public key in memory of the wireless communication device, initiating the second secure wireless communication of the wireless communication device with the desired communication device, and transmitting the second public key to the desired communication device, are ample evidence that the process is tied to a particular machine.

Claims 20, 29 and 31 recite a “wireless communication device for fast generation of a cryptographic key, comprising: a processor for: . . .” Applicants assert that the claimed wireless communication device of claims 20, 29 and 31 falls within the statutory categories of a machine and a manufacture. “If the claimed product falls within one of the three product categories of invention and does not recite judicially excepted subject matter, e.g., an abstract idea, a mathematical algorithm, a law of nature, or a natural phenomenon, it qualifies as eligible subject matter.” See, Interim Examination Instructions, page 3. Thus, claims 20, 29 and 31 recite patentable subject matter. Further, Applicants assert that claims directed to an invention falling with one or more of the three product categories of invention are not subject to the machine or transformation test. In addition, the examiner has not asserted that claims 20, 29 and 31 recite judicially excepted subject matter.

Claims 21, 26 and 28 recite a “processor for fast generation of a cryptographic key, said processor being configured to: . . .” Applicants assert that the claimed processor of claims 21, 26 and 28 falls within the statutory categories of a machine and a manufacture. “If the claimed product falls within one of the three product categories of invention and does not recite judicially excepted subject matter, e.g., an abstract idea, a mathematical algorithm, a law of nature, or a natural phenomenon, it qualifies as eligible subject matter.” See, Interim Examination Instructions, page 3. Thus, claims 21, 26 and 28 recite patentable subject matter. Further, Applicants assert that claims directed to an invention falling with one or more of the three product categories of invention are not subject to the machine or transformation test. In addition, the examiner has not asserted that claims 21, 26 and 28 recite judicially excepted subject matter.

Claims 22, 23 and 25 recite a “memory comprising instructions for fast generation of a cryptographic key, wherein the instructions upon execution cause a computer to:”

Applicants assert that the claimed memory of claims 22, 23 and 25 falls within the statutory categories of a manufacture. “If the claimed product falls within one of the three product categories of invention and does not recite judicially excepted subject matter, e.g., an abstract idea, a mathematical algorithm, a law of nature, or a natural phenomenon, it qualifies as eligible subject matter.” See, Interim Examination Instructions, page 3. Further, “a claim to a non-transitory, tangible computer readable storage medium, *per se* that possess structural limitations under the broadest reasonable interpretation standard to qualify as a manufacture would be patent-eligible subject matter. Adding additional claim limitations to the medium, such as executable instructions or stored data, to such statutory eligible claim would not render the medium non-statutory, so long as the claim as a whole has a real world use and the medium does not cover substantially all practical uses of a judicial exception. The claim as a whole remains a tangible embodiment and qualifies as a manufacture.” See, Interim Examination Instructions, page 4. Thus, claims 22, 23 and 25 recite patentable subject matter. Further, Applicants assert that claims directed to an invention falling with one or more of the three product categories of invention are not subject to the machine or transformation test. In addition, the examiner has not asserted that claims 22, 23 and 25 recite judicially excepted subject matter.

Accordingly, for the reasons given above, Applicants assert that claims 12, 15, 20-23, 25, 26, 28, 29, 31 and 32 recite patentable subject matter. Therefore, the rejections of claims 12, 15, 20-23, 25, 26, 28, 29, 31 and 32 as allegedly directed to non-statutory subject matter should be withdrawn.

Claim Rejections – 35 USC § 112

Claims 16, 19 and 33 were rejected under 35 U.S.C. §112, second paragraph, as allegedly being indefinite for failing to particularly pointing out and distinctly claim the subject matter which application regards as the invention.

The rejections of claims 16, 19 and 33 as allegedly failing being indefinite are respectfully traversed. The examiner asserts that the “the specification does not link either of the claimed means, mentioned above, with any of the elements from figure 1.” See, Office Action, page 4, item 9.

Applicants assert that the specification does clearly link the “means for initiating” to the input/output device 106 of the electronic device 100, shown in Figure 1. As described in the specification, “[g]enerally a user of electronic device 100 will request secure communication with a second communication device by depressing one or more keys on a keypad of input/output device 106.” See, specification, page 4, paragraph [0018]. Further, “a user of electronic device initiates a secure communication with a desired communication device, as shown in step 208.” See, specification, page 5, paragraph [0024]. Accordingly, Applicants assert that one of ordinary skill in the art would recognize that the “means for initiating” is clearly linked to the input/output device 106 of Figure 1.

Similarly, Applicants assert that the specification does clearly link the “means for transmitting” to the processor 102 of the electronic device 100, shown in Figure 1. As described in the specification, the “[p]rocessor 102 generally controls the overall functionality of electronic device 100” See, specification, page 3, paragraph [0013]. Further, the processor “then proceeds to step 214.” Then, “processing continues to step 214, where the key(s) are retrieved from memory 104 and transmitted to the desired communication device.” See, specification, page 5, paragraph [0024]. Accordingly, Applicants assert that one of ordinary skill in the art would recognize that the “means for transmitting” is clearly linked to the processor 102 of Figure 1.

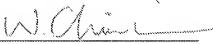
Thus, the rejections of claims 16, 19 and 33 as allegedly being indefinite should be withdrawn.

REQUEST FOR ALLOWANCE

In view of the foregoing, Applicant submits that all pending claims in the application are patentable. Accordingly, reconsideration and allowance of this application are earnestly solicited. Should any issues remain unresolved, the Examiner is encouraged to telephone the undersigned at the number provided below.

Respectfully submitted,

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